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In the mid-1960s, state legislatures began to encourage property owners to make natural and rural areas available for appropriate recreational activities, such as hiking, fishing and hunting, through recreational use statutes.[1] Subsequently, all states have adopted recreational use statutes with differing coverage of properties and recreational activities.[2] These statutes provide incentives for property owners to allow others to use their property gratuitously by altering the duties providers owe recreational users.[3] By redefining the duty of care, the recreational use statutes make it less likely that a property owner will be liable for damages to an injured recreational user.[4] Given the litigious nature of Americans, the reduction of the duty of care to keep premises safe serves to promote recreational uses of private properties.[5] In most state statutes, the duty owed recreational users is similar to the duty owed to trespassers.[6]

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1 *E.g.*, CAL. CIV. CODE § 846.1 (2001).

2 *See infra* App. 1.

3 *See, e.g.*, John C. Becker, *Landowner or Occupier Liability for Personal Injuries and Recreational Use Statutes: How Effective is the Protection?*, 24 IND. L. REV. 1587 (1991) (describing the recreational use statutes); Stuart J. Ford, Comment, *Wisconsin's Recreational Use Statute: Towards Sharpening the Picture at the Edges*, 1991 WIS. L. REV. 491 (describing the purposes of recreational use statutes and Wisconsin's evolution of statutory provisions); Martha L. Noble, *Recreational Access to Agricultural Land: Insurance Issues*, 24 IND. L. REV. 1615 (1991) (discussing insurance issues with respect to recreational uses of land).

4 *See, e.g.*, Robert D. Lee, Jr., *Recreational Use Statutes and Private Property in the 1990s*, 13 J. PARK AND RECREATION ADMIN. 71 (1995) (enumerating the meaning of the statutes' reconfiguration of the duty of care).

5 *See, e.g.*, Joan M. O'Brien, Comment, *The Connecticut Recreational Use Statute: Should a Municipality be Immune from Tort Liability?*, 15 PACE L. REV. 963, 988 (1994, 1995) (noting that even greater incentives may be needed).

6 *E.g.*, TEX. CIV. PRAC. & REM. CODE ANN. § 75.002(a)(2) (West 1997 & Supp. 2000) (stating that recreational users are not owed a greater degree of care than a trespasser); *see also* Flye v. City of Waco, 50 S.W..3d 645 (Tex. Civ. App. 2001) (interpreting the Texas recreational use statute as limiting defendant's duty to that owed to trespassers); Charpentier v. Von Geldern, 236 Cal. Rptr. 233, 236 (Cal. Ct. App. 1987) (concluding that a landowner's duty under the California recreational use statutes is no greater than that owed a trespasser).

A prototype state recreational use statute was developed in 1965[7] and amended in 1979.[8] However, the "fear of litigation" continues to deter fuller access to private lands.[9] Some recreational areas may be underutilized due to the inability of existing legislation to provide adequate protection against liability for recreational injuries.[10] One impediment of many state recreational use statutes is a provision that precludes recreational activity providers from receiving certain types of compensation.[11] Over one-half of the statutes contain prohibitions on monetary consideration and most of the remaining recreational use statutes preclude coverage if the property owner charges an entry fee .[12] Given prohibitions on monetary consideration and charges collected by landowners, many landowners are not eligible for protection under the state recreational statutes.

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7 24 Counsel of State Governments, Suggested State Legislation, Public Recreation on Private Lands: Limitations on Liability 150 - 152 (1965).

8 W. L. CHURCH, PRIVATE LANDS AND PUBLIC RECREATION: A REPORT AND PROPOSED NEW MODEL ACT ON ACCESS, LIABILITY AND TRESPASS 1-34 (1979) (describing the justifications for recreational use statutes).

9 *See, e.g.*, James C. Kozlowski, *Recklessness Reaffirmed*, PARKS & RECREATION, Oct. 1999, at 42 (observing a judicial recognition that fear of litigation can curtail recreational and sport activities).

10 *See, e.g.*, Hubbard v. Brown, 785 P.2d 1183, 1185 (Cal. 1990) (noting that the statutory goal of the recreational use statute was to "constrain the growing tendency of private landowners to bar public access to their land for recreational uses out of fear of incurring tort liability" [cites omitted]).

11 *E.g.*, "[t]he provisions of this section shall not limit the liability of a landowner which may otherwise arise or exist when the landowner receives a fee for use of the premises..." VA. CODE ANN. 3.1-509(D) (Michie 1994), *repealed by* Acts 1970, c. 29.

12 *See infra* App. 2. *See also, e.g.*, Prince v. City of Apache Junction, 912 P.2d 47 (Ariz. Ct. App. 1996) (finding that a team entry fee paid to the city was consideration that disqualified the city from immunity under the recreational use statute); Jansen v. Howard, 263 Cal. Rptr. 776, 781 (Cal. Ct. App. 1989) (concluding a fee paid to enter a race was consideration that triggered the "consideration exception" so that defendant could not claim the defense of the recreational use statute); Plano v. City of Renton, 14 P.3d 871 (Wash. Ct. App. 2000) (finding a moorage fee disqualified the defendant from immunity under the recreational use statute).

While conceptual and case analyses have addressed distinctions between admission fees and other monetary consideration,[13] recent legislative changes adopted by various states in "shared responsibility statutes"[14] suggest that legislatures and the public have altered their attitudes regarding immunity for persons providing recreational activities.[15] Given the protection afforded to private sport activities, thought might be given to revising recreational use statutes to allow limited amounts of compensation.[16]

This article is a statutory comparison that offers suggestions for encouraging private landowners to make properties available to others for recreational activity purposes. After discussing a few historic specifications provided by recreational use statutes, an analysis of the strategies of shared responsibility statutes discloses a legislative willingness to grant liability protection to profit-making businesses. Through carefully drawn exceptions, recreational activity providers may be granted immunity from liability without compromising the claims of recreational users who deserve compensation for injuries. Greater allowance of compensation may enable more providers to qualify for protection under a recreational use statute.

Traditional Statutes

Recreational use statutes were enacted to reduce situations in which qualifying recreational providers could incur liability for

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[13] *See, e.g.*, Lee, *supra* note 4, at 77-78 (agreeing with the prohibition of remuneration but noting exceptions for improvements or indirectly levied charges); *see infra* notes 99-106 and accompanying text.

[14] *See infra* note 116 and accompanying text.

[15] *See, e.g.*, Howard P. Benard, *Little League Fun, Big League Liability*, 8 MARQ. SPORTS L.J. 93, 131 (1997) (noting the need of statutes to shield volunteer coaches from liability).

[16] *See, e.g.*, Terrence J. Centner, *Tort Liability for Sports and Recreational Activities: Expanding Statutory Immunity for Protected Classes and Activities*, 26 J. LEGIS. 1 (2000) (discussing immunity statutes including those for commercial sport activities).

damages to injured participants.[17] Persons making lands available to others do not owe recreational users a duty of care to keep premises safe.[18] Some recreational use statutes say that recreational providers do not need to give warning of dangerous conditions, structures, or activities.[19] Due to the dissipation of the common law standard of care in qualifying situations, and the duty to give warnings, recreational activity providers may escape liability for negligence.[20]

Individual state recreational use statutes have digressed from their historic model so that general rules applying to all state statutes are difficult to prescribe. Preconditions are set forth as qualifications and exceptions.[21] Litigation concerning the statutory provisions of recreational use statutes show an ambiguous set of rules that may operate to frustrate the opening of private lands for recreation uses.[22]

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17 *E.g.*, ALA. CODE § 35-15-20 (1991). It is hereby declared . . . that it is in the public interest to encourage owners of land to make such areas available to the public for non-commercial recreational purposes by limiting such owners' liability towards persons entering thereon for such purposes; that such limitation on liability would encourage owners of land to allow non-commercial public recreational use of land which would not otherwise be open to the public. . . . *Id.*

18 *E.g.*, the Virginia statute says that landowners do not "[i]mpliedly or expressly represent that the premises are safe . . . ." VA. CODE ANN. § 29.1-509(C)(1) (Michie 1997).

19 *E.g.*, S.C. CODE ANN. § 27-3-30 (Law. Co-op. 1991).

20 *See, e.g.*, Scrapchansky v. Town of Plainfield, 627 A.2d 1329, 1331, 1336 (Conn. 1993) (finding a municipal corporation to be immune from negligence claims due to the state recreational use statute); Robbins v. Great Northern Paper Co., 557 A.2d 614, 616 (Me. 1989) (finding that plaintiffs' negligence claims were defeated by the recreational use statute); Hoye v. Illinois Power Company, 646 N.E.2d 651 (Ill. App. Ct. 1995) (finding defendants immune from plaintiffs' negligence actions under the recreational use statute).

21 *E.g.*, VA. CODE ANN. § 29.1-509(D) (Michie 1997). Nothing contained in this section, except as provided in subsection E, shall limit the liability of a landowner which may otherwise arise or exist by reason of his gross negligence or willful or malicious failure to guard or warn against a dangerous condition, use, structure, or activity. . . . VA. CODE ANN. § 29.1-509(D) (Michie 1997).

22 *See, e.g.*, Becker, *supra* note 3, at 1613 (recommending that recreational use statutes be clarified to eliminate ambiguities); Jan Lewis, *Recreational Use Statutes: Ambiguous Laws Yield Conflicting Results*, TRIAL Dec. 1991, at 68

Plaintiff litigation and arguments about various issues under recreational use statutes have prompted a few courts to express remarks on the statutory coverage. In considering injuries to passengers in a four-wheel-drive, multipurpose vehicle, the New York Court of Appeals noted that "[t]he Legislature may exercise its policy choice to modify, limit or expand this special immunity if it wishes in light of the empirical data, the evolution of the precedents and the competing policy objectives of the legislation."[23] The court then retreated from an earlier pronouncement[24] to deny defendants summary judgment because it was not clear whether the plaintiffs were engaged in a recreational purpose.[25]

In considering an accident injuring a child playing on a vacant lot, an Indiana court was prompted to note that "it is precisely liability for these types of tragic events from which the land owner is protected under the [recreational use statute]."[26] While distinctions among states' recreational statutes create a confusing array of rules, a few highlights about providers, activities, and residual liability are offered to help set the stage for an analysis of expanding terms governing compensation.

Providers and their Premises

Most recreational use statutes apply to property owners, lessees, tenants, occupants, and persons controlling premises[27] so that the term "recreational activity provider" or "provider" can be used to discuss to

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(arguing that an ambiguity of the type of land qualifying for immunity has led to contradictory interpretations of provisions); J. Brandon McWherter, Comment, *Parent v. State: Tennessee's Recreational Use Statute and Its Effects on Liability*, 30 U. MEMPHIS L. REV. 671, 684 (2000) (noting that with every court decision addressing a recreational use statute, landowners gain a clearer understanding of what the statute offers them).

23 Farnham v. Kittinger, 634 N.E.2d 162, 166 (N.Y. 1994) (considering the applicability of N.Y. GEN. OBLIG. LAW § 9-103 (McKinney 1989)).

24 Iannotti v. Consolidated Rail Corp., 542 N.E.2d 621 (N.Y. 1989).

25 *Farnham*, 634 N.E.2d at 167.

26 Cunningham v. Bakker Produce, Inc., 712 N.E.2d 1002, 1006 (Ind. Ct. App. 1999) (considering a child's injury on defendant's property from a limb which siblings had lifted but accidentally dropped on the child).

27 *See, e.g.*, NEB. REV. STAT. § 37-729(2) (Supp. 1999).

whom they apply. Recreational use statutes grant protection whenever a provider-defendant uses the statute as an affirmative defense and meets the statutory preconditions.[28]

The intent of recreational statutes was to limit the liability of private landowners[29] in rural settings.[30] However, with the demise of sovereign immunity and the rise of accidents at public recreational facilities, many states have broadened their statutes.[31] Recreational use statutes have diverse provisions on providers' properties that qualify for the statutory immunity. Some statutes continue to limit the immunity to owners of large tracts of land,[32] and courts have found that accidents occurring at developed recreational facilities do not qualify for the immunity proffered by the recreational use statute.[33]

Interpretations of other statutes show that their provisions apply to developed recreational facilities, such as ball fields, parks, and swimming pools.[34] Generally, a state's recreational use statute does not

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28 *See, e.g.*, O'Brien, *supra* note 5, at 973 (discussing the Connecticut statute).

29 *See, e.g.*, Jeffrey C. Kestenband, Note, *Conway v. Town of Wilton: Statutory Construction, Stare Decisis, and Public Policy in Connecticut's Recreational Use Statute*, 30 CONN. L. REV. 1091 (1998) (analyzing a court's decision that the Connecticut statute did not apply to municipal property).

30 *See, e.g.*, Toogood v. St. Andrews at Valley Brook Condominium Ass'n., 712 A.2d 1262, 1263 (N.J. Super. Ct. App. Div.1998) (noting that the New Jersey recreational use statute had been intended to apply to rural settings).

31 *E.g.*, the Illinois recreational use statute defines owner to include "the possessor of any interest in land, whether it be a tenant, lessee, occupant, the State of Illinois and its political subdivisions, or person in control of the premises." 745 ILL. COMP. STAT. ANN. 65/2 (West 1993).

32 *See, e.g.*, Scrapchansky v. Town of Plainfield, 627 A.2d 1329, 1334 (Conn. 1993) (finding the state recreational use statute covered a ball field).

33 *See, e.g.*, Sena v. Town of Greenfield, 696 N.E.2d 996, 999 (N.Y. 1998) (finding that the immunity of the recreational use statute did not apply to a supervised public park); Stone v. York Haven Power Co., 749 A.2d 452, 455-56 (Pa. 2000) (concluding that the recreational use statute does not provide immunity to accidents occurring on improved recreational facilities).

34 *Scrapchansky*, 627 A.2d at 1335-36 (finding that a baseball field qualified as premises covered by the recreational use statute); Cooley v. City of Carrollton, 579 S.E.2d 689 (Ga. Ct. App. 2001) (granting a city summary judgment regarding

apply to owners of suburban residential property[35] or land utilized for storage.[36] However, in *Cunningham v. Bakker Produce, Inc.*,[37] an Indiana court found that a state recreational use statute applied to an accident occurring on a vacant lot.[38] Given that the neighboring children had been using the lot to play baseball, the court found a recreational use and applied the recreational use statute to defeat the claim for damages.[39]

Another issue has been whether a person qualifies as a provider when they occupy property under a permit. A case from California, *Hubbard v. Brown*,[40] considered the question of whether a permit holder occupying federal land for grazing purposes could be liable for an accident to a motorcycle driver.[41] The rancher had strung a barbed wire fence and gate across a roadway to control his cattle.[42] The injured motorcyclist sued in negligence, and the defendant raised the recreational use statute[43] as his defense.[44] In a lengthy opinion, the court found that amendments to the California statute had expanded coverage to include owners of easements and of revocable permits, and that the holder of a permit to graze livestock had a sufficient interest in real property to come within the statute's immunity.[45]

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alleged negligence at a swimming pool); Bonewell v. City of Derby, 693 P.2d 1179, 1181-82 (Kan. 1984) (finding a ball field in a city park qualified as premises covered by the recreational use statute); Van Dinter v. City of Kennewick, 827 P.2d 329, 331 (Wash. Ct. App. 1992) (finding a city qualified for summary judgment for an accident involving a playground toy).

35 *Toogood*, 712 A.2d at 1265-66.

36 Ornelas v. Randolph, 8 Cal. Rptr.2d 214, 218 (Cal. Ct. App. 1992) (finding property where equipment was stored had no legitimate recreational use).

37 Cunningham v. Bakker Produce, Inc., 712 N.E.2d 1002, 1002 (Ind. Ct. App. 1999).

38 *Id.* at 1006.

39 *Id.*

40 Hubbard v. Brown, 785 P.2d 1183 (Cal. 1990).

41 *Id.* at 1184.

42 *Id.*

43 CAL. CIV. CODE § 846 (West 1982).

44 *Hubbard*, 785 P.2d at 1184.

45 *Id.* at 1187.

This result might be contrasted with *Stramka v. Salt River Recreation, Inc.*,[46] an Arizona case involving a defendant operating an inner tube rental service under a permit with the United States Forest Service.[47] The injured plaintiff sued for negligence and the defendant claimed immunity under the state recreational use statute.[48] The court found that the defendant was not an "owner, occupant or lessee" of the site of the accident, thus the defendant did not qualify for immunity.[49]

Activities Covered

Recreational use statutes generally contain qualifications as to the types of recreational activities that are governed by the statutory standard of care. Courts have concluded that persons entering property to engage in activities distinct from those activities enumerated in the recreational use statute are not recreational users.[50] For example, in *Smith v. Arizona Board of Regents*,[51] jumping on a trampoline was found not to be a recreational use covered by the Arizona statute.[52] Consistent with the *Smith* decision, another Arizona court concluded that a woman who entered a public park to work for a food vendor serving food at a civic event was not a recreational user.[53] The court determined that the nature and purpose of the activity should be used to determine whether a property user is a recreational user.[54]

Not everyone engaged in a recreational activity qualifies for statutory immunity. In *McMillan v. Parker*,[55] the plaintiff was on the

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46 Stramka v. Salt River Recreation, Inc., 877 P.2d 1339 (Ariz. Ct. App. 1994).

47 *Id.* at 1340.

48 ARIZ. REV. STAT. ANN. § 33-1551 (West 1990) (subsequently amended).

49 *Stramka*, 877 P.2d at 1342.

50 Smith v. Arizona Bd. of Regents, 986 P.2d 247 (Ariz. Ct. App. 1999); Herman v. City of Tucson, 4 P.3d 973 (Ariz. Ct. App. 1999).

51 *Smith*, 986 P.2d at 252.

52 *Id.* (analyzing ARIZ. REV. STAT. ANN. § 33-1551(C)(4)).

53 *Herman*, 4 P.3d at 975, 978.

54 *Id.* at 979.

55 McMillan v. Parker, 910 S.W.2d 616 (Tex. App. 1995).

defendant's property to view wild boars.[56] The defendant argued that this was a recreational activity, but the court disagreed.[57] The court found the plaintiff to be a social guest so that the recreational use statute was inapplicable.[58]

In another Texas case, *Torres v. City of Waco*,[59] a court considered the issue of whether the recreational use statute applied to a particular recreational activity.[60] A child was injured when a volleyball stand fell on her while she was attending an after-school program.[61] The property owner, a governmental entity, claimed immunity under the Texas recreational use-statute.[62] The court opined that while the after-school program involved recreational activities, its activities went beyond those enumerated by the recreational use statute.[63] Thus, the property owner was not entitled to summary judgment.[64]

The Georgia Supreme Court was presented the unique question of whether the defense of the state's recreational use statute[65] applied to the bombing in the Centennial Olympic Park during the 1996 Olympic Games.[66] The plaintiffs argued that the availability of the park was to further a commercial enterprise so that the statutory defense was not available.[67] After reviewing cases from other states, the court employed a balancing test to determine whether the activities qualified under the state statute.[68] Given that the trial court had not considered all of the appropriate social and economic factors, it was held that summary

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56 *Id.* at 617.

57 *Id.* at 618.

58 *Id.* at 619.

59 Torres v. City of Waco, 51 S.W.3d 814 (Tex. App. 2001).

60 *Id.* at 817.

61 *Id.* at 814.

62 *Id.* at 820.

63 *Id.* at 821 (analyzing TEX. CIV. PRAC. & REM. CODE ANN. § 75.001(3) (West 1997)).

64 *Id.* at 822.

65 GA. CODE ANN. §§ 51-3-20 to 51-3-26 (1982).

66 Anderson v. Atlanta Comm. for the Olympic Games, Inc., 537 S.E.2d 345 (Ga. 2000).

67 *Id.* at 349.

68 *Id.*

judgment for the Atlanta Committee for the Olympic Games was not appropriate.[69]

Residual Liability

Recreational use statutes, however, do not remove all duties owed by recreational providers. Some allegations remain actionable despite a recreational use statute. A statute may not apply to allegations of negligent supervision. Others may exist due to attractive nuisance or failure to meet the standard of care owed trespassers.

A recent case from Maine shows residual liability for failure to supervise.[70] In *Dickinson v. Clark*, the plaintiff was injured while loading a wood splitter.[71] Because the Maine recreational use statute covers the harvesting or gathering of forest products,[72] which may include firewood,[73] the plaintiff did not allege the premise's liability. Instead, the plaintiff alleged "negligent supervision and instruction on the use of the splitter . . . ."[74] The court found that this claim was not precluded by the recreational use statute.[75]

Another question about the scope of a recreational use statute is whether it precludes claims based on the doctrine of attractive nuisances. The prevalent response is that such claims survive.[76] In *City of Indianapolis v. Johnson*,[77] an Indiana court found that the recreational use statute did not affect a claim based on an attractive

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69 *Id.*

70 Dickinson v. Clark, 767 A.2d 303 (Me. 2001).

71 *Id.* at 304.

72 ME. REV. STAT. ANN. tit. 14, § 159-A(1)(B) (West Supp. 1999).

73 The court declined to determine whether the splitting of logs to produce firewood qualified as "the harvesting or gathering of forest . . . products." *Dickinson*, 767 A.2d at 306.

74 *Id.*

75 *Id.*

76 *See, e.g.*, N.C. GEN. STAT. § 38A-4 (1999); *see also* Jacobsen v. City of Rathdrum, 766 P.2d 736 (Idaho 1988); City of Indianapolis v. Johnson, 736 N.E.2d 295, 299 (Ind. Ct. App. 2000).

77 *Johnson*, 736 N.E. at 295.

nuisance.[78] An Idaho court reached the same result.[79] Conversely, the Wisconsin statute specifically provides for the opposite result.[80] The attractive nuisance doctrine is not available against defendants that qualify under the recreational use statute in that state.[81]

Most statutes assert that persons providing recreational activities incur liability for willful or malicious failure to guard or warn against a dangerous condition, use, structure, or activity.[82] This means that an allegation by an injured plaintiff that the defendant willfully disregarded the plaintiff's safety may present an issue for determination by the court.[83] Yet courts can determine as a matter of law that the facts fail to allege any willful or malicious conduct.[84] Landowners allowing others to come onto their properties need to discuss with users any special conditions that might lead to an accident.[85]

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78 *Id.* at 298.

79 *Jacobsen*, 766 P.2d at 742 (noting that the recreational use statute does not preclude application of the doctrine of attractive nuisance, but the doctrine was not proven for this case); *see also* Cunningham v. Bakker Produce, Inc., 712 N.E.2d 1002, 1006-07 (Ind. Ct. App. 1999) (discussing the attractive nuisance exception to the recreational use statute).

80 WIS. STAT. ANN. § 895.52(7) (West 2000).

81 *See* Minnesota Fire & Cas. Ins. Co. v. Paper Recycling Co., 627 N.W.2d 527, 537 (Wis. 2001) (noting that the recreational use statute precludes recovery under the doctrine of attractive nuisance).

82 *E.g.*, N.J. STAT. ANN. § 2A:42A-4 (West 2000).

83 *See, e.g.*, Dickey v. City of Flagstaff, 4 P.3d 965, 971 (Ariz. Ct. App. 1999) (finding that the plaintiffs had failed to present evidence that the property owner's conduct was grossly negligent so that summary judgment for the property owner was affirmed).

84 *See, e.g.*, Anderson v. Atlanta Comm. for the Olympic Games, Inc., 537 S.E.2d 345, 349 (Ga. 2000) (granting summary judgment to defendants on claims that they had acted willfully or maliciously); Bird v. Economy Brick Homes, Inc., 498 N.W.2d 408, 410 (Iowa 1993) (concluding that there was no issue of willful or malicious conduct); Bragg v. Genesee County Agric. Society, 644 N.E.2d 1013, 1018 (1994) (granting summary judgment in the absence of evidence of malice or willful intent by defendants).

85 *See, e.g.*, John G. Pike and S. Charles Neill, *Hunting Liability in Kansas: Premises Liability and the Kansas Recreational Use Statute*, 38 WASHBURN L.J. 831, 836-838 (1999) (discussing the need for landowners to give information on

Expansion of Compensation under Prototype Revisions

Recreational use statutes initially incorporated a "Good Samaritan" qualification under which immunity was available only when the provider gratuitously provided land and water areas to users for recreational activities.[86] Although state restrictions against charges have been eroding, most recreational use statutes enunciate admission fees or consideration as prohibited compensation.[87] Thus, a provider needs to meet the qualification of not collecting a fee or compensation to qualify for the statutory defense.[88] A few statutes pronounce that their coverage is only for providers who permit noncommercial recreational use of lands.[89] Remuneration is permitted under these statutes so long as there is no commercial recreational use.

With the redrafting of the prototype in 1979, a new definition of "charge" relaxed the compensation prohibition traditionally incorporated in recreational use statutes.[90] Three exceptions delineated by the prototype are noteworthy due to their potential to expand the situations where recreational activity providers can qualify for the protection afforded by a recreational use statute: (1) benefits related to

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property conditions to persons using their properties).

86 *See, e.g.*, Kathryn D. Horning, Comment, *The End of Innocence: The Effect of California's Recreational Use Statute on Children at Play*, 32 SAN DIEGO L. REV. 857, 860 (citing the 1965 suggested legislation by the Council of State Governments).

87 *See infra* App. 2.

88 *See, e.g.*, Prince v. City of Apache Junction, 912 P.2d 47 (Ariz. Ct. App. 1996) (finding that a team entry fee paid to the city was consideration that disqualified the city from immunity under the recreational use statute); Jansen v. Howard, 263 Cal. Rptr. 776, 781 (Cal. Ct. App. 1989) (concluding a fee paid to enter a race was consideration that triggered the "consideration exception" so that defendant could not claim the defense of the recreational use statute); Plano v. City of Renton, 14 P.3d 871 (Wash. Ct. App. 2000) (finding a moorage fee disqualified the defendant from immunity under the recreational use statute).

89 *E.g.*, "[e]xcept as specifically recognized by or provided in this article, an owner of outdoor recreational land who permits non-commercial public recreational use of such land owes no duty of care ..." ALA. CODE § 35-15-22 (1991).

90 CHURCH, *supra* note 8, at 12.

the recreational use, (2) compensation for land conservation, and (3) governmental and nominal payments.[91] Because not all state legislatures have incorporated these exceptions into their recreational use statutes, an investigation of statutory provisions can address the merits of whether the liability protection afforded by recreational use statutes might be expanded.

Charges for Benefits and Participation

While charges consisting of admission fees for permission to go upon land often prevent a provider from qualifying for the protection of a recreational use statute,[92] charges that are not admission fees may be allowed.[93] Two major categories of charges may be sanctioned by a particular recreational use statute: benefits and fees for participation.

Some recreational use statutes list "benefits to or arising from the recreational use" as an exception to the fee prohibition.[94] An Illinois court considered the meaning of this clause in *Hoye v. Illinois Power Company*,[95] a lawsuit relating to injuries from a boating accident. In *Hoye*, a quadriplegic plaintiff alleged that the defendant did not qualify for the protection of the recreational use statute due to the receipt of rent and a percentage of concession and docking fees from a marina.[96] Assuming that the defendant had collected such monies, the *Hoye* court found that the defendant had not collected "a fee for admission to the

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91 CHURCH, *supra* note 8, at 12-14.

92 *E.g.*, OHIO REV. CODE ANN. § 1533.18 (West 1996); *see also* Huth v. Ohio Dep't of Natural Res., 413 N.E.2d 1201, 1203 (Ohio 1980) (finding that the payment of an admission fee meant there was no recreational user so the recreational use statute was not applicable to the mishap).

93 *E.g.*, "'[c]harge' means an admission fee for permission to go upon the land, but does not include: the sharing of game, fish or other products of recreational use; or benefits to or arising from the recreational use; or contributions in kind, services or cash made for the purpose of properly conserving the land." 745 ILL. COMP. STAT. ANN. 65/2(d) (West 1993).

94 *Id.*

95 Hoye v. Illinois Power Co., 646 N.E.2d 651 (Ill. App. Ct. 1995).

96 *Id.* at 652.

land."[97] Without an admission fee, the defendant qualified for the protection afforded by the Illinois recreational use statute.[98]

Registration fees charged for persons to participate in a recreational activity may be found to be distinct from admission fees. In *Seich v. Town of Canton*,[99] a parent was injured while attending a daughter's basketball game. The town had charged a registration fee for participation in its youth basketball league to defray the costs of the players' t-shirts, referees, necessary athletic equipment, and expenses for custodians.[100] The court found that the parents were participants in a recreational use and had not been charged an admission fee.[101] Thus, the recreational use statute applied and the town was immune from suit for the injuries.[102] A Georgia court followed this logic in *Quick v. Stone Mountain Memorial Association*,[103] holding that a fee for parking is not a fee for admission.[104] Similarly, under the Nebraska recreational statute, charges to enter land disqualify providers from immunity.[105] In a case involving an injured camper, a Nebraska court concluded that a rental fee paid by a school to use a camp was not a charge because it was a rental.[106]

These judicial interpretations show that the statutory exception allowing activity providers to collect benefits related to a recreational use enables providers to structure compensation as payment for something other than an admission fee. The ability to receive benefits other than admission fees significantly broadens the category of recreational activity providers who can qualify for the protection of a recreational use statute.

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97 *Id.* at 654.

98 *Id.* (considering 745 ILL. COMP. STAT. ANN. 65/6(b)(West 1992)).

99 Seich v. Town of Canton, 686 N.E.2d 981 (Mass. 1997).

100 *Id.* at 982.

101 *Id.* at 983.

102 *Id.*

103 Quick v. Stone Mountain Mem'l Assoc., 420 S.E.2d 36 (Ga. Ct. App. 1992).

104 *Id.* at 38.

105 NEB. REV. STAT. § 37-729 (1998 & Supp. 1999).

106 Teters v. Scottsbluff Public Schools, 567 N.W.2d 314, 326 (Neb. Ct. App. 1997).

Compensation for Land Conservation

In recognition that recreational properties might benefit from land conservation measures, the 1979 prototype authorized contributions in kind and services or cash to help a provider with land conservation measures.[107] Such compensation would not operate to defeat the liability protection offered providers under the recreational use statute. Some state statutes couch such compensation as permitted for wildlife management.[108] This allows recreational participants and others to provide services for the removal of brush or trees, or to plant flora that would provide an improved habitat for a recreational purpose.

Moreover, the 1979 prototype does not restrict compensation for land conservation to services. Donations of money for land conservation are condoned.[109] Since the protection of many state recreational use statutes is not available when there is an admission fee, a provision allowing funds to be paid for land conservation enlarges the class of providers who qualify for statutory immunity.

Governmental Payments and Nominal Sums

Public utilities and other landowners sometimes lease lands to governments for use as recreational or park lands. The lessor property owners may thereby receive compensation. The 1979 prototype recognized this possibility and provided an exception under which providers of such lands would qualify for the protection of a recreational use statute.[110] A large number of states have incorporated a provision under which the duties and liabilities of landowners who lease lands to the state or other government entities are those prescribed by the

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107 CHURCH, *supra* note 8, at 20-21.

108 *E.g.*, "services rendered for the purpose of wildlife management...." IND. CODE ANN. § 14-22-10-2(b)(2) (Michie Supp. 2000).

109 CHURCH, *supra* note 8, at 20-21. *See, e.g.*, WIS. STAT. ANN. § 895.52(6)(a)3 (West Supp. 2000) (allowing a donation of money for the conservation of resources).

110 CHURCH, *supra* note 8, at 14.

recreational use statute.[111] In a different manner, some recreational use statutes assert that remuneration received from the state or other government shall not be deemed to be a charge within the meaning of the statute.[112] Under this provision, the payment of governmental monies for idling agricultural land would not disqualify a landowner from the protection of a recreational use statute.

Several recreational use statutes recognize that nominal sums paid to recreational activity providers should not disqualify providers from the protection afforded by recreational use statutes.[113] The state of Wisconsin adopted a broad exception.[114] Not only can a recreation provider collect up to $2,000 during a year, but compensation of gifts of products, compensation for conservation of resources, and payments from governmental bodies are not included in determining this dollar figure.[115] The Wisconsin configuration provides protection for property owners despite their receipt of nominal compensation.

Strategy for Relaxing Liability Provisions

Perhaps one of the most significant developments concerning statutory immunity despite the receipt of compensation is the enactment of legislative immunity provisions called "shared responsibility statutes" for businesses and persons providing specialized risky sport activities.[116]

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111 *E.g.*, "[u]nless otherwise agreed in writing, the provisions of §§ 5-1103 and 5-1104 are applicable to any duty and liability of an owner of land leased to the State or any of its political subdivisions for any recreational or educational purpose." MD. CODE ANN., NAT. RES. I, § 5-1105 (2000).

112 *E.g.*, PA. STAT. ANN. tit. 68, § 477-6(2) (West 1994).

113 *E.g.*, 745 ILL. COMP. STAT. ANN. 65/2(d) (West 1993); IND. CODE ANN. § 14-22-10-2.5(2)(B) (Michie Supp. 2000).

114 WIS. STAT. ANN. § 895.52(6)(a) (West 2000).

115 *Id.*

116 *E.g.*, ALASKA STAT. §§ 05.45.010C.210 (Michie 2000) (skiing); ARIZ. REV. STAT. §§ 5-701 to -706 (Supp. 2000) (skiing); ARIZ. REV. STAT. § 12-554 (Supp. 2000) (baseball); COLO. REV. STAT. ANN. § 13-21-120 (West 1999) (baseball); COLO. REV. STAT. ANN. §§ 33-44-101 to -114 (West 1998) (skiing); CONN. GEN. STAT. ANN. §§ 29-211 to -214 (West 1990) (skiing); GA. CODE ANN. §§ 27-4-280 to -283 (Supp. 2000) (fishing); GA. CODE ANN. § 51-1-43 (Supp.

The objectives of these new statutes are to encourage safety, reduce injury litigation, and stabilize economic conditions for a sport

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2000) (roller skating); IDAHO CODE §§ 6-1101 to -1109 (Michie 1998) (skiing); IDAHO CODE §§ 6-1201 to -1206 (Michie 1998) (outfitters and guides); 745 ILL. COMP. STAT. ANN. 52/1 to 52/99 (West & Supp. 2001) (hockey facilities); 745 ILL. COMP. STAT. ANN. 72/1 to 72/30 (West Supp. 2001) (roller skating); IND. CODE ANN. §§ 34-31-6-1 to -4 (Michie 1998) (roller skating); ME. REV. STAT. ANN. tit. 8, §§ 601C608 (West 1997) (roller skating); ME. REV. STAT. ANN. tit. 8, §§ 801C806 (West Supp. 2000) (amusement rides); ME. REV. STAT. ANN. tit. 32, §§ 15201C15227 (West 1999 & Supp. 2000) (skiing); MASS. GEN. LAWS ANN. ch. 143, §§ 71(H)C71(S) (West 1991 & Supp. 2001) (skiing); MICH. COMP. LAWS ANN. §§ 408.321C.344 (West 1999) (skiing); MICH. COMP. LAWS ANN. §§ 445.1721C.1726 (West Supp. 2001) (roller skating); MICH. COMP. LAWS ANN. §§ 691.1541C.1544 (West 2000) (sport shooting); MONT. CODE ANN. §§ 23-2-651 to -655 (1999) (snowmobiling); MONT. CODE ANN. §§ 23-2-731 to -736 (1999) (skiing); NEV. REV. STAT. 455A.010C.190 (1999) (skiing); NEV. REV. STAT. 455B.010C.100 (1999) (amusement rides); N.H. REV. STAT. ANN. §§ 225-A:1 to -A:26 (1989) (skiing); N.J. STAT. ANN. §§ 5:13-1 to -11 (West 1996) (skiing); N.J. STAT. ANN. §§ 5:14-1 to -7 (West 1996) (roller skating); N.M. STAT. ANN. §§ 24-15-1 to -14 (Michie 2000) (skiing); N.Y. GEN. OBLIG. LAW §§ 18-101 to -107 (McKinney 1989 & Supp. 2001) (skiing); N.Y. LABOR LAW §§ 865C868 (McKinney 1988) (skiing); N.C. GEN. STAT. §§ 99C-1 to -5 (1999) (skiing); N.C. GEN. STAT. §§ 99E-10 to -14 (1999) (roller skating); N.D. CENT. CODE §§ 53-09-01 to -11 (1999) (skiing); OHIO REV. CODE ANN. §§ 4169.01C.99 (West 1994 & Supp. 2001) (skiing); OHIO REV. CODE ANN. §§ 4171.01C.10 (West 1994 & Supp. 2001) (roller skating); OR. REV30.970C.990 (1988 & Supp. 1998) (skiing); PA. CONS. STAT. ANN. tit. 42, § 7102 (West 1998) (skiing); R.I. GEN. LAWS §§ 41-8-1 to -4 (1997) (skiing); S.C. CODE ANN. §§ 52-21-10 to -60 (Law. Co-op. Supp. 2000) (ice and roller skating); S.D. CODIFIED LAWS ANN. §§ 32-20A-21 to -23 (Michie 1998) (snowmobiling); TENN. CODE ANN. §§ 68-114-101 to -107 (1996) (skiing); TEX. HEALTH & SAFETY CODE ANN. §§ 759.001C.005 (Vernon Supp. 2001) (roller skating); TEX. HEALTH & SAFETY CODE ANN. §§ 760.001C.006 (Vernon Supp. 2001) (ice skating); UTAH CODE ANN. §§ 47-3-1 to -3 (Supp. 2000) (sport shooting); UTAH CODE ANN. §§ 78-27-51 to -54 (1996) (skiing); VT. STAT. ANN. tit. 12, §§ 1036C1038 (Supp. 1999) (skiing), WASH. REV. CODE. ANN. §§ 79A.45.010 - .060 (West Supp. 2001) (skiing); W. VA. CODE §§ 20-3A-1 to -8 (Michie 1996) (skiing); W. VA. CODE §§ 20-3B-1 to -5 (1996) (whitewater rafting); WYO. STAT. §§ 1-1-121 to -123 (Michie 2001) (recreational sports); WYO. STAT. § 6-9-301 (Michie 2001) (skiing).

industry.[117] Most common are statutory provisions for skiing[118] and horseback riding.[119] A few states have enacted a shared responsibility statute for fishing,[120] outfitters and guides,[121] whitewater rafting,[122] snowmobiling,[123] roller skating,[124] and sport shooting.[125] These statutes are called shared responsibility statutes because they designate responsibilities for persons providing sport activities and for participants.

The major thrust of shared responsibility statutes is to curtail liability and lawsuits related to injuries from the inherent risks of sport activities.[126] Under the statutes, participants assume the burden for injuries from inherent risks while engaging in the sport.[127] The inherent risks of a sport are those dangers or conditions that are an integral part

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117 Barr v. Mt. Brighton, 546 N.W.2d 273 (Mich. App. 1996).

118 *See, e.g.*, Catherine Hansen-Stamp, *Recreational Injuries and Inherent Risks: Wyoming's Recreational Safety Act- An Update*, 33 LAND & WATER L. REV. 249 (1998) (examining a recreational safety statute that is written as a shared responsibility statute).

119 *See, e.g.*, Krystyna M. Carmel, *The Equine Activity Liability Acts: A Discussion of Those in Existence and Suggestions for a Model Act*, 83 KY. L.J. 157 (1994) (explaining new laws regulating liability for equine activities); Terence J. Centner, *The New Equine Liability Statutes*, 62 TENN. L. REV. 997 (1995) (classifying the laws regulating liability for equine accidents); Terence J. Centner, *Modifying Negligence Law for Equine Activities in Arkansas: A New Good Samaritan Paradigm for Equine Activity Sponsors*, 50 U. ARK. L. REV. 637 (1998) (describing the grant of immunity in relation to equine accidents).

120 *E.g.*, GA. CODE ANN. §§ 27-4-280 to -283 (Supp. 2001).

121 *E.g.*, IDAHO CODE §§ 6-1201 to -1206 (Michie 1998).

122 *E.g.*, W. VA. CODE §§ 20-3B-1 to -5 (1996).

123 *E.g.*, MONT. CODE ANN. §§ 23-2-651 to -655 (1999).

124 *E.g.*, N.J. STAT. ANN. §§ 5:14-1 to -7 (West 1996).

125 *E.g.*, UTAH CODE ANN. §§ 47-3-1 to -3 (Supp. 2000).

126 *See* Cathy Hansen and Steve Duerr, *Recreational Injuries & Inherent Risks: Wyoming's Recreation Safety Act*, 28 LAND & WATER L. REV. 149, 168-73 (1993) (discussing the Wyoming ski statute that declined to define duties or delineate specific inherent risks).

127 *E.g.*, "[a] skier is deemed to have knowledge of and to assume the inherent risks of skiing. . ." N.J. STAT. ANN. § 5:13-5 (West 1996).

of the sport.[128] Because of the statutory directives concerning inherent risks, participants assume responsibility for many obvious and necessary dangers.[129] Legislative bodies have deemed these commercial activities constitute special situations so that the prohibition of a fee is no longer a necessary or appropriate precondition for immunity.[130]

Given the protection against liability provided commercial operators under the shared responsibility statutes, interest groups and legislatures may want to assess the prohibitions against remuneration in recreational use statutes. Through minor amendments to a state recreational use statute, the existing prohibition against compensation could be relaxed. While the above discourse defining the expansion of compensation permitted by the 1979 recreational use prototype acknowledges ideas that may be appropriate for some states, additional situations can be identified under which statutory exceptions could allow activity providers to receive remuneration without defeating the statutory protection.

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[128] *E.g.*, inherent risks for roller skaters may include "injuries which result from incidental contact with other roller skaters or spectators, injuries which result from falls caused by loss of balance, and injuries which involve objects or artificial structures properly within the intended path of travel of the roller skater, which are not otherwise attributable to a rink operator's breach of his duties. . ." N.J. STAT. ANN. § 5:14-6 (West 1996).

[129] *E.g.*, each person who participates in the sport of skiing accepts the dangers that inhere in that sport insofar as the dangers are obvious and necessary. Those dangers include, but are not limited to, injuries which can result from variations in terrain; surface or subsurface snow or ice conditions; bare spots; rocks, trees, and other forms of natural growth or debris; collisions with ski lift towers and their components, with other skiers, or with properly marked or plainly visible snow-making or snow-grooming equipment. MICH. COMP. LAWS ANN. § 408.342 (West 1999).

[130] *E.g.*, "[t]he Legislature finds that the sport of skiing is practiced by a large number of citizens of this State and also attracts to this State large numbers of nonresidents, significantly contributing to the economy of this State and, therefore, the allocation of the risks and costs of skiing are an important matter of public policy." N.J. STAT. ANN. § 5:13-1(a) (West 1996).

Discussion of Further Dispensation

Although prohibitions on entry fees and consideration serve as a general rule, exceptions can allow minor compensation without compromising qualification under a recreational use statute. Four contemporary exceptions show novel provisions to encourage dispensation for providers opening their properties for recreational purposes: (1) contributions to offset educational costs, (2) tax-based compensation for agricultural land, (3) fees for game rights, and (4) a liability ceiling with insurance coverage for agricultural properties.

Contributions to Offset Educational Costs

North Carolina allows private recreational providers to qualify for the defense of the recreational use statute whenever educational services are involved.[131] A more limited exception is delineated by the Arizona recreational use statute.[132] Contributions that offset costs of educational or recreational premises and services are permitted for public entities and nonprofit corporations without affecting the statutory protection for these groups.[133] The North Carolina and Arizona statutes show that contributions for educational services could be added as a statutory exception that would not disqualify an activity provider from the protection of the recreational use statute. With this exception, more providers might be encouraged to make their private lands available for educational purposes.

Tax-based Compensation for Agricultural Land

The Texas recreational use statute deviates significantly from the prohibition against compensation.[134] Recreational activity providers of agricultural land may charge for entry to their premises and qualify for the statutory protection so long as the total charges are less than four

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131 N.C. GEN. STAT. §§ 38A-1 to 38A-4 (1999).

132 ARIZ. REV. STAT. ANN. § 33-1551 (2000).

133 *Id.*

134 TEX. CIV. PRAC. & REM. CODE ANN. §§ 75.001C.4 (Vernon 2000).

times the total amount of ad valorem taxes imposed on the premises the previous year.[135] Other providers of recreational lands may qualify for the protection of the statute if their total charges are less than twice the total amount of ad valorem taxes.[136] Agricultural lands are defined broadly to include the production of plants, forestry lands, and the production of animals.[137]

These tax-based compensation provisions show a desire to allow persons to qualify for protection despite collecting entry charges, but a desire that the charges be circumscribed. Ad valorem taxes of the premises are recognized as a benchmark for determining the limit. Under this policy, more valuable properties can collect greater amounts and still qualify for the protection afforded by the Texas recreational use statute.

Fees for Game Rights

One recreational pursuit intended to be encouraged by recreational use statutes was hunting on private lands. Given the prohibition against admission fees in most recreational use statutes, landowners allowing others to hunt or collect game on their property cannot collect rental monies and still qualify for the statutory protection. Without the ability to charge rent, it is unclear how much incentive a recreational use statute offers property owners to allow others to hunt or catch game on their property.

An exception to this fee prohibition is provided by a Georgia hunting law[138] that is distinct from the Georgia recreational use statute.[139] A provision in Georgia's hunting law provides that "[a]ny owner of land, lessee of land, or lessee of the game rights to land who gives permission to another person to hunt upon the land with or without charge shall be entitled to the same protection from civil

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135 *Id.* at § 75.003(c)(2)(B).

136 *Id.* at § 75.003(c)(2)(A).

137 *Id.* at § 75.001(1).

138 GA. CODE ANN. § 27-3-1 (1997).

139 *Id.* at §§ 51-3-20 to -26 (1982).

liability provided by [the Georgia recreational use statute] . . . ."[140] Thus, although the recreational use statute does not acknowledge that persons can collect fees for hunting and qualify for the statutory protection, this is possible due to the protection afforded landowners under Georgia's hunting law. The protection delineated by the Georgia law suggests that a state's law could be structured so that charges for fishing, trapping, and other activities would not exclude coverage of the recreational use statute.

Liability Ceiling with Insurance Coverage

The Texas Legislature also considered liability of owners of agricultural land in context of a limitation on the amount that injured recreational users can recover. The Texas recreational use statute contains a provision limiting monetary damages for qualifying private landowners of agricultural land to $500,000 for each person and $1 million for each occurrence of bodily injury or death.[141] Separate from the personal injury lid, there also is a limit for injury to or destruction of property of $100,000 for each occurrence.[142]

Private landowners only qualify for this protection if they have adequate liability insurance coverage to compensate injuries occurring on their property. The insurance coverage under the Texas statute needs to be in the amount of $1 million for each occurrence.[143] Thus, the liability ceiling is conditioned on the existence of substantial insurance monies for recreational injuries. In this manner, activity providers could secure insurance and qualify for the protection of the recreational use statute.

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140 *Id.* at § 27-3-1 (1997).

141 TEX. CIV. PRAC. & REM. CODE ANN. § 75.004(a) (Vernon 2000).

142 *Id.*

143 *Id.* at § 75.004(b).

Conclusion

The comparison of various provisions of state recreational statutes shows disparities in the treatment of compensation as a qualifier for liability protection. While most statutes preclude protection for persons collecting admission fees or other monetary consideration, other provisions allow qualified compensation. Yet, given recent statutory developments for specific recreational sports such as skiing and horseback riding, greater thought might be given to expanding the protection afforded by recreational use statutes. Through appropriate revisions, additional private property owners might qualify for the dispensation provided by recreational use statutes.

Additional provisions could allow recreational activity providers to collect ancillary compensation without being disqualified from the protection afforded by the statute. Recreational activity providers might be able to receive contributions to offset educational costs associated with the public use of the property. For agricultural and natural areas, a tax-based exception could allow limited compensation as admission fees. For specific recreational pursuits such as hunting and fishing, special provision could be made to allow nominal fees for these activities without disqualifying landowners from the protection of the recreational use statute. If landowners have adequate insurance to cover recreational injuries, they might be eligible for protection against damages in excess of the insurance coverage.

By incorporating these exceptions into a recreational use statute, a legislature might be more successful in encouraging private property owners to make their properties available for outdoor recreational activities.

Appendix 1: State Recreational Use Statutes

ALA. CODE §§ 35-15-20 to -28 (1991)
ALASKA STAT. § 09.65.200 (Michie 2000)
ARIZ. REV. STAT. ANN. § 33-1551 (West Supp. 2000)
ARK. CODE. ANN. §§ 18-11-301 to -307 (Michie 1987 & Supp. 2001)
CAL. CIV. CODE §§ 846, 846.1 (West Supp. 2001), *repealed by* Stats.1933, ch.744, p.1904, § 198.
COLO. REV. STAT. ANN. §§ 33-41-101 to -106 (West 1998)
CONN. GEN. STAT. ANN. §§ 52-557f to -557k (West 1991)
DEL. CODE ANN. tit. 7 §§ 5901C5907 (1991)
FLA. STAT. ANN. § 375.251 (West 2000)
GA. CODE ANN. §§ 27-3-1 (1997), 51-3-20 to -26 (1982)
HAW. REV. STAT. ANN. §§ 520-1 to -8 (Michie 2000)
IDAHO CODE § 36-1604 (Michie Supp. 2001)
745 ILL. COMP. STAT. ANN. 65/1 - 65/7 (West 1993)
IND. CODE ANN. §§ 14-22-10-2 to -2.5 (Michie Supp. 2000)
IOWA CODE ANN. §§ 461C.1C.7 (West 1997)
KAN. STAT. ANN. §§ 58-3201 to -3207 (1994 & Supp. 1999)
KY. REV. STAT. ANN. §§ 150.645 (Banks-Baldwin 1996), 411.190 (Banks-Baldwin Supp. 1999)
LA. REV. STAT. ANN. §§ 9:2791, 9:2795 (West 1997)
ME. REV. STAT. ANN. tit. 14, § 159-A (West Supp. 1999)
MD. CODE ANN., NAT. RES. §§ 5-1101 to -1109 (2000)
MASS. GEN. LAWS ANN. ch. 21, § 17C (West Supp. 2001)
MICH. COMP. LAWS ANN. § 324.73301 (West 1999)
MINN. STAT. ANN. §§ 604A.20C.27 (West 2000)
MISS. CODE ANN. §§ 89-2-1 to -27 (1999)
MO. ANN. STAT. §§ 537.345C.348 (West 2000)
MONT. CODE ANN. §§ 70-16-301 to -302 (1999)
NEB. REV. STAT. §§ 37-729 to -736 (1998 & Supp. 1999)
NEV. REV. STAT. 41.510 (1999)
N.H. REV. STAT. ANN. § 212:34 (1989)
N.J. STAT. ANN. §§ 2A:42A-2 to -10 (West 2000)
N.M. STAT. ANN. § 17-4-7 (Michie 1995)
N.Y. GEN. OBLIG. LAW § 9-103 (McKinney 1989)
N.C. GEN. STAT. §§ 38A-1 to -4 (1999)

N.D. CENT. CODE §§ 53-08-01 to -06 (1999)
OHIO REV. CODE ANN. §§ 1533.18C.181 (Anderson 1996)
OKLA. STAT. ANN. tit. 2, § 1301-315 (West Supp. 2001), tit. 76, " 5, 11 (West 1995)
OR. REV. STAT. §§ 105.670C.696 (1990 & Supp. 1998)
PA. STAT. ANN. tit. 68, §§ 477-1 to -8 (West 1994)
R.I. GEN. LAWS §§ 32-6-1 to -7 (1994 & Supp. 2000)
S.C. CODE ANN. §§ 27-3-10 to -70 (Law. Co-op. 1991)
S.D. CODIFIED LAWS §§ 20-9-12 to -18 (Michie 1995)
TENN. CODE ANN. §§ 70-7-101 to -105 (1995)
TEX. CIV. PRAC. & REM. CODE ANN. §§ 75.001C.004 (Vernon 1997 & Supp. 2001)
UTAH CODE ANN. §§ 57-14-1 to -7 (Supp. 2000)
VT. STAT. ANN. tit 12, § 5791C5795 (Supp. 1999)
VA. CODE ANN. § 29.1-509 (Michie 1997)
WASH. REV. CODE ANN. §§ 4.24.200C.210 (West 1988 & Supp. 2001)
W. VA. CODE §§ 19-25-1 to -7 (Michie 1997)
WIS. STAT. ANN. §§ 895.52, 895.525 (West Supp. 2000)
WYO. STAT. §§ 34-19-101 to -106 (Michie 2001)

Appendix 2:
Remuneration that Compromises the Protection Offered by the State Recreational Use Statute

AL consideration for commercial activities and maintenance fees by landowners where the primary use is for public recreational purposes C ALA. CODE §§ 35-15-21(5), 35-115-22 (1991)

AK a responsibility to compensate C ALASKA STAT. § 09.65.200(a)(2) (2000)

AZ admission fee or consideration to travel across or enter upon premises, but allows nominal fees by public entities and nonprofit corporations to offset the cost of providing the recreational or educational services C Ariz. Rev. Stat. Ann. § 33-1551(C)(1) (West Supp. 2000)

AR an admission fee to enter or use property, but allows sharing of products and contributions in kind to offset costs and eliminate losses and leasing to the state or subdivision thereof C ARK. STAT. ANN. §§ 18-11-302(4)(B), 18-11-307(2) (Michie 1987 & Supp. 1999)

CA consideration except consideration from the state C CAL. CIV. CODE § 846 (West Supp. 2001) *repealed by* Stats.1933, ch.744, p.1904, § 198.

CO consideration paid for entry upon or use of land or facilities, but allows consideration for lands leased to a public entity and consideration from federal government agencies C COLO. REV. STAT. ANN. §§ 33-41-102(1), 33-41-104(1)(b) (West 1998)

CT charge, rent, fee or other commercial service asked in return for invitation or permission to enter or go upon the land, except that charges for harvesting less than 100 cords of firewood are allowed C CONN. GEN. STAT. ANN. §§ 52-557g(b), 552-557k(c) (West 1991)

DE the admission price or fee asked in return for invitation or permission to enter or go upon the land, except consideration from leasing lands to the state or subdivision thereof is permitted C DEL. CODE ANN. tit. 7, §§ 5902(4), 5906 (1991)

FL charge to enter or use land or where profit is derived from the patronage of the general public C FLA. STAT. ANN. § 375.251(2)(b) (Harrison 2000).

GA the admission price or fee asked in return for invitation or permission to enter or go upon the land, but property owners and others who give permission to persons to hunt may collect charges, and consideration from leasing lands to the state is permitted C GA. CODE ANN. §§ 51-3-24, 51-3-25, 27-3-1 (1982 & 1997)

HI the admission price or fee asked in return for invitation or permission to enter or go upon the land, except consideration from leasing lands to the state or subdivision thereof is permitted C HAW. REV. STAT. §§ 520-2, 520-5 (Michie 2000)

ID any charge, except consideration from leasing lands to the state or subdivision thereof is permitted C IDAHO CODE § 36-1604(a, d, e) (Supp. 2001)

IL an admission fee for permission to go upon land, but a charge does not include sharing of game or fish, contributions in kind, cash made for the purpose of properly conserving the land, or consideration from leasing lands to the state or subdivision thereof is permitted C 745 ILL. COMP. STAT. ANN. 65/2(d), 65/5 (West 1993)

IN a fee or other charge for permission to go upon land but monetary consideration does not include sharing of game or fish, services rendered for wildlife management, or contributions in kind made for the purpose of wildlife management C IND. CODE ANN. § 14-22-10-2.5(2)(b) (Michie Supp. 2000)

IA any consideration, the admission price or fee asked in return for invitation or permission to enter or go upon the land, except consideration from leasing lands to a government is permitted C IOWA CODE ANN. §§ 461C.2(1), 461C.6(2) (West 1997)

KS the admission price or fee asked in return for invitation or permission to enter or go upon the land, with exceptions for leasing lands to the state or subdivision thereof C KAN. STAT. ANN. §§ 58-3202(d), 58-3205 (1994 & Supp. 1999)

KY the admission price or fee asked in return for invitation or permission to enter or go upon the land, with exceptions for leasing lands to the state or subdivision thereof C KY. REV. STAT. ANN. §§ 150.645 (Banks-Baldwin 1996), 411.190 (Banks-Baldwin Supp. 1999)

LA the admission price or fee asked in return for permission to use lands, except consideration from leasing lands to a government is permitted C LA. REV. STAT. ANN. § 9:2795(A)(4) & (C) (West 1997)

ME a consideration other than consideration paid by the state or when the premises are not used primarily for commercial recreational purposes and the user was not granted exclusive right to use the premises for recreational purposes C ME. REV. STAT. ANN. tit. 14, § 159-A(4)(B) (West Supp. 1999)

MD price or fee asked for services, entertainment, recreation performed, or products offered for sale on land or in return for invitation or permission to enter or go upon land, with exceptions for sharing of products, benefits to land, contributions for management or conservation of resources, and leasing lands to the state of subdivisions thereof C MD. CODE ANN., NAT. RES. §§ 5-1101(b), 5-1105 (2000)

MA a charge or fee to use land except voluntary payments not required to be made to use such land C MASS. GEN. LAWS ANN. ch. 21, § 17C (West Supp. 2001)

MI valuable consideration C MICH. COMP. LAWS ANN. § 324.73301(1) (West 1999)

MN any admission price asked or charged for services, entertainment, recreational use, or other activity or the offering of products for sale by a profit enterprise directly related to the use of the land, except consideration from leasing lands to the state or subdivision thereof and consideration for dedicated recreational and trail properties by municipal power agencies are permitted C MINN. STAT. ANN. §§ 604A.21(2), 604A.24 (West 2000)

MS any fee to enter or use land or area, or if a concession is operated, except certain consideration from governments is permitted C MISS. CODE ANN. §§ 89-2-7, 89-2-27 (1999)

MO the admission price or fee, or an invitation for the purpose of sales promotion, advertising or public goodwill in fostering business purposes C MO. ANN. STAT. § 537.345(1) (West 2000)

MT a valuable consideration C MONT. CODE ANN. § 70-16-302(1) (1999)

NE amount of money asked in return for an invitation to enter or go upon the land, but rental paid by a group, organization, corporation, or state or federal government shall not be deemed a charge C NEB. REV. STAT. §§ 37-729, 37-734(2) (1998 & Supp. 1999)

NV consideration other than consideration from the state or subdivision thereof or for a game tag C NEV. REV. STAT. § 41.510(3)(a)(2) (1999)

NH consideration other than consideration from the state C N.H. REV. STAT. ANN. § 212:34(III)(b) (1989)

NJ consideration other than consideration from the state C N.J. STAT. ANN. § 2A:42A-4(b) (West 2000)

NM consideration paid other than consideration from a government or governmental agency C N.M. STAT. ANN. § 17-4-7(A) (Michie 1995)

NY consideration other than consideration from the state or federal government C N.Y. GEN. OBLIG. LAW § 9-103(2)(b) (McKinney 1989)

NC a price or fee for services, entertainment, recreation performed, or products offered for sale on land, but allows contributions for remedying damages caused by education or recreational use, removing certain hazards, and property tax abatement C N.C. GEN. STAT. §§ 38A-2(1), 38A-3 (1999)

ND the amount of money asked in return for invitation to enter or go upon the land, with an exception for leased land to state or political subdivisions C N.D. CENT. CODE §§ 53-08-01(1), 53-08-04 (1999)

OH consideration other than consideration from the state or an agency of the state C OHIO REV. CODE ANN. §§ 1533.18(B) (Anderson 1996)

OK admission price or fee asked in return for invitation or permission to enter, or whenever any commercial activity for profit is conducted, except for governmental license or permit fees and land for farming or ranching activities C OKLA. STAT. ANN. tit. 2, § 1301-315 (West Supp. 2001), tit. 76, § 5 (West 1995)

OR the admission price or fee asked in return for permission to enter or go upon the land, except that charges of no more than $20 per cord for permission to use the land for woodcutting are permitted C OR. REV. STAT. §§ 105.672, 105.688(2)(C) (1990 & Supp. 1998)

PA the admission price or fee asked in return for invitation or permission to enter or go upon the land, except consideration from leasing lands to the state or subdivisions is permitted C PA. STAT. ANN. tit. 68, §§ 477-2(4), 477-5 (West 1994)

RI the admission price or fee asked in return for invitation or permission to enter or go upon the land, except leasing lands to the state is permitted C R.I. GEN. LAWS §§ 32-6-2(1), 32-6-4 (1994 & Supp. 2000)

SC the admission price or fee asked in return for invitation or permission to enter or go upon the land, except leasing lands to the state is permitted C S.C. CODE ANN. §§ 27-3-20(d), 27-3-50 (Law. Co-op. 1991)

SD admission price or fee asked in return for invitation or permission to enter or go upon the land or nonmonetary gift of less than $100, except leasing lands to the state is permitted and governmental incentive payments C S.D. CODIFIED LAWS §§ 20-9-12(1), 20-9-15, 20-9-16 (Michie 1995)

TN consideration other than consideration from the state or federal government or governmental agency C TENN. CODE ANN. § 70-7-104(2) (1995)

TX charge for entry, but permits charges if they are less than an amount as determined by the premises' ad valorem taxes or there is adequate liability insurance coverage C TEX. CIV. PRAC. & REM. CODE ANN. § 75.003(2)(Vernon 1997 & Supp. 2000)

UT the admission price or fee asked in return for permission to enter or go upon the land or for a nominal fee of not more than $1, except leasing lands to the state is permitted C UTAH CODE ANN. §§ 57-14-2(4), 57-14-4, 57-14-5 (Supp. 2000)

VT a price, fee or other charge in return for the permission to enter upon or travel across the owner's land, but allows compensation or benefits from permanent recreational use easements, compensation for damages from recreational use, and contributions for damages to offset or insure against damages sustained by an owner C VT. STAT. ANN. tit 12, § 5792(1) (Supp. 1999)

VA payment for use of premises or engage in an activity, but not including rentals or fees from governmental sources, incidental sales of forest products, qualified actions to improve the land or access, or remedying certain damages C VA. CODE ANN. § 29.1-509(A) (Michie 1997)

WA a fee except providers may charge an administrative fee of up to $25 for the removal of firewood C WASH. REV. CODE ANN. § 4.24.210(3) (West 1988 & Supp. 2001)

WV consideration from a government or governmental agency, or money asked in return for an invitation to enter or go upon the land but a one-time of $50 or less per year is permitted and funds for leasing lands to governments C W. VA. CODE ANN. §§ 19-25-4, 19-25-5(1)(A) (Michie 2001)

WI collection of money, goods or services exceeding $2,000 per year, but donations for management and conservation of resources, payment of not more than $5 per person per day to gather products, payments from governments, and payments from nonprofit organizations for recreational agreements are not included C WIS. STAT. ANN. § 895.52(6)(a) (West Supp. 2000)

WY	the admission price or fee asked in return for permission to enter or go upon the land, except leasing lands to the state is permitted C WYO. STAT. ANN. §§ 34-19-101(a)(iv), 34-19-104 (Michie 2001)